INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Exhibit "D-47"—Phtostat of Certificate of Service awarded to Clinton E. Jencks, dated 10/5/45 1041
Exhibit "D-47-A"—Photostat of Military Record and Report of Separation, Certificate of Service, Clinton E. Jencks 1042
Exhibit "D-48"—Photostat of Letter, signed J. F. Artchee, dated 1/14/54 1045
Exhibit "D-49"—Photostat of Letter, M. H. Ross to Marshall W. Amis, dated 1/19/54 1046
Exhibit "D-50"—Photostat of Letter, Public Housing Administration to M. H. Ross, dated 1/19/54 1047
Court's Instructions to the Jury 1048
Colloquy between Court and Counsel 1050
Motions of Defendant for Mistrial and Ruling thereon 1051
Defendant's Requested Charges submitted to the Court before the Court charged the Jury, Ruling and exception of Defendant thereto 1051
Charge of the Court 1052
Exception of Defendant to Charge of the Court, Overruled 1066
Further Charge of the Court 1069
Oral Argument of Government Counsel, Francis C. Broaddus 1071
Oral Argument of Government Counsel, Hovery Williams 1099

INDEX—Continued

	PAGE
Defendant's Requested Charges and Ruling thereon	1117
Verdict of the Jury	1126
Judgment, Sentence and Order of Commitment, entered 1/21/54	1127
Motion of Defendant for New Trial	1129
Application of Defendant for permission to file an Amended Motion for New Trial and to fix the time within which same may be filed	1131
Order entered 1/26/54 Granting permission to file Amended Motion for New Trial and fixing the time within same may be filed	1132
Amended Motion of Defendant for New Trial and in Arrest of Judgment	1133
Order Overruling Motion for New Trial and in Arrest of Judgment	1145
Notice of Appeal	1145
Order entered 6/29/54 fixing Amount of Bail Bond	1147
Appeal Bond	1147
Bail Bond	1149
Motion and Order extending time to file Record in Appellate Court	1151-1152
Appellant's Designation of Contents of Record on Appeal	1152
Appellee's Designation of Contents of Record on Appeal	1156
Testimony of Lawrence E. Stevens, Jury Commissioner, Re Motion to Dismiss Indictment	1157
Defense Closing Argument by Mr. John T. McTernan Only	1165
Clerk's Certificate	1190

CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Western District of Texas, The Honorable R. E. Thomason, presiding, and holding its sessions at El Paso, Texas, which term began on the 5th day of October, A. D. 1953, and continued in session to, and included, the 11th day of January, 1954, there came on to be heard and determined, among other causes pending on the docket, the following cause, to-wit:

No. 54013 Criminal.

UNITED STATES OF AMERICA,

versus

CLINTON E. JENCKS.

A transcript of the proceedings follows:

INDICTMENT.

(Filed April 20, 1953.)

In the District Court of the United States for the Western District of Texas, El Paso Division.

No. 54013—Criminal

(18 U. S. C., Sec, 1001)

United States of America,

vs.

Clinton E. Jencks.

The Grand Jury Charges:

First Count.

That on or about the 28th day of April, 1950, in the Western District of Texas, Clinton E. Jencks, the Defendant herein, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully and wilfully make, use and cause to be made and used and file and cause to be filed with the National Labor Relations Board a false writing and document namely an "Affidavit of Non-Communist Union Officer" (Form NLRB—1081) knowing the same to contain a false fictitious and fraudulent statement and representation to wit: that he was not a member of the Communist Party, whereas the said Clinton E. Jencks then and there well knew he was a member of the Communist Party.

In violation of Section 1001, Title 18, United States Code.

The Grand Jury further charges:

Second Count.

That on or about the 28th day of April, 1950, in the Western District of Texas, Clinton E. Jencks, the Defendant herein, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully and wilfully make, use and cause to be made and used and filed and caused to be filed with the National Labor Relations Board a false writing and document namely an "Affidavit of Non-Communist Union Officer" (Form NLRB—1081) knowing the same to contain a false fictitious and fraudulent statement and representation to wit: that he was not affiliated with the

Communist Party, whereas the said Clinton E. Jencks then and there well knew he was affiliated with the Communist Party.

In violation of Section 1001, Title 18, United States Code.

A True Bill.
(S.) F. F. BARNES,
Foreman of the Grand Jury.

MOTION TO DISMISS INDICTMENT—ILLEGALLY AND UNCONSTITUTIONALLY CONSTITUTED GRAND JURY.

(Filed September 28, 1953.)

To The Curt:

Comes now the defendant and moves to dismiss the indictment herein for the reason that the ground jury which found and presented the indictment was composed of grand jurors drawn from a jury box which did not contain the names of any persons of the female sex; that the Jury Commissioner and the Clerk of this Court did, for purposes of selecting said grand jury, intentionally, systematically and entirely exclude all persons of the female sex in their selection of names to be placed in said jury box; that this exclusion of such persons was effected solely on account of their sex; that only the names of persons of the male sex were placed in said jury box, for purposes of selecting said grand jury, and that only from said names of persons of the male sex were the names of the grand jurors on said grand jury selected; that the practices of the Jury Commissioner and

the Clerk of this Court as herein described have been observed and effected continuously for at least thirty years last past with the result that the name of no person of the female sex has during said period of time been placed in a jury box or selected for grand jury service; that by virtue of the foregoing, neither the grand jury which found and presented the indictment herein, nor the group of names placed in the jury box from which the names of the persons constituting said grand jury were drawn was a cross section of the community of this District or truly representative of it; that by virtue of the foregoing, the indictment herein was not found and presented by a fair and impartial grand jury, contrary to the Fifth Amendment to the Constitution of the United States and is void and of no effect, and to hold defendant and to proceed to trial upon it would deprive defendant of due process of law and equal protection of the laws contrary to said Fifth Amendment; that to the extent the aforesaid practices of the Jury Commissioner and the Clerk of this Court are permitted or required by the provisions of Title 28 United States Code, Section 1861, those provisions are unconstitutional and void in that they deprive defendant of the scrutiny of a fair and impartial grand jury and of due process of law and equal protection of the laws, all contrary to the Fifth Amendment to the Constitution of the United States.

This motion is based upon the affidavit of E. B. Elfers and the memorandum of points and authorities annexed hereto and upon all the papers, records and files in this action.

Respectfully submitted,
JOHN T. McTERNAN,

Los Angeles, California.
(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MEMORANDUM OF POINTS AND AUTHORITIES.

1. The intentional and systematic exclusion of women from the lists or boxes or panels from which the grand jury or trial jury is drawn renders the jury fatally unrepresentative of the community in the same manner as the exclusion of an economic or racial group.

Ballard v. United States, 329 US 187, 193-194; 91 L. ed 181, 186

Thiel v. Southern Pacific Co., 328 US 217; 90 L.ed 1181

Smith v. Texas, 311 US 128; 85 L.ed 84

2. Systematic exclusion of women from grand juries contravenes our basic concepts of a democratic society

and representative government; it results in a purposeful denial of detachment and impartiality in the grand jury that undermines the meaning of "grand jury" as used in the Fifth Amendment and deprives the accused of due process of law and equal protection of the laws.

Ballard v. United States, supra

United States v. Roemig, (DC ND, Ia.) 52 F. Supp. 857, 862

Compare: Glasser v. United States, 315 US 60; 86 L.ed 680

3. The Congress, being without power to exclude women from federal juries, may not accomplish that result by reference to a state law making such exclusion.

Thiel v. Southern Pacific Co., 328 U. S. 217, 221; 90 L.ed 1181, 1185

Kie v. United States, (CC, Ore.) 27 Fed. 351

4. The statute creating qualifications for federal jurors (28 USC Section 1861) was intended to establish uniform standards of qualifications for jurors in Federal Courts instead of making qualifications depend upon State laws. To interpret subdivision four of that section to disqualify women in this District would defeat the statutory aim of uniformity by disqualifying, in this District and all others situated in States having statutes similar to the Texas statute, at least one half the population. Such an absurd contradiction of purpose cannot be attributed to the Congress.

28 USCA Section 1861, Revisers Note

Report of the Judicial Conference of Senior

Circuit Judges, Oct. 1946 (Gov't Printing Office, Wash., D. C., 1946)—page 21

S. 1245, 79th Congress

5. In purposing the establishment of uniform standards for qualifications of jurors in Federal Courts "in accord with proposed legislation recommended by the Judicial Conference of the United States", the Congress specifically intended to abolish all disqualifications of women. The recommendations of the Judicial Conference as early as 1942 declared that "women as a group are capable of acting as jurors and should irrespective of state law be called for service in the Federal Courts."

Report of the Judicial Conference of Senior Circuit Judges, 1942—Report of Special Committee—page 23

The legislation proposed by the Judicial Conference in the two Congresses preceding that which enacted 28 USC Section 1861 was purposed to permit women to serve as jurors in all Federal Courts.

S. 1623, 78th Congress

S. 1245, 79th Congress

42 Mich, L. Rev. 831, 852, 853—Jury Selection Analyzed, Blume

33 ABA Law Journ. 113, 114—Present Status of Women as to Jury Service, Fisher

6. The exclusion of women is wholly arbitrary and without reasonable basis.

2 Stanford L. Rev. 691, 724-726

2 Ore. L. Rev. 30, 39-42

21 Tenn. L. Rev. 427

7 Improper constitution of the grand jury may be raised by motion to dismiss the indictment.

Ballard v. United States, supra

Glasser v. United States, supra.

Respectfully submitted,
JOHN T. McTERNAN,

Los Angeles, California.

(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

AFFIDAVIT OF E. B. ELFERS.

Before Me, the undersigned authority, a Notary Public in and for El Paso County, Texas, on this day personally appeared E. B. Elfers, who being by me first duly sworn, upon his oath deposes and says:

My name is E. B. Elfers, and I reside in El Paso, El Paso County, Texas, where I have, as a duly licensed attorney, been actively engaged for the past forty-five years in the practice of law in all Courts of the State of Texas, and in the United States Court for the Western District of Texas.

As a practicing attorney, I have become and am familiar with the practice and procedure pursued by the Jury Commissioner for the El Paso Division of the United States District Court for the Western District of Texas, and the Clerk and his deputies in that Court, in selecting the names of persons available for jury service, and placing such names in the jury box from which the names of all persons serving as grand and petit jurors in that Court have been drawn. The practice of using a jury box to hold the names of such jurors has been followed for the past thirty years. During that period, from observation of the persons serving as grand and petit jurors in that Court, and from conversations from time to time with J. N. Phillips, Chief Deputy Clerk, recently deceased, and Laurence E. Stevens, Jury Commissioner, I have become and am familiar with the practice and procedure which has at all times during that period been followed by the Clerk and Jury Commissioner in selecting the names of persons whose names are placed in the jury box as available for grand and petit jury service in that Court. I have learned that the number

of names has varied from year to year, the practice being to have not less than 900 names in the box, and that there has never been more than approximately 1100 names in the box. In selecting names and placing them in the jury box, only the names of men have been selected, the Jury Commissioner and the Clerk, or his deputies, having at all times purposely and systematically excluded the names of women solely because of their sex, the Jury Commissioner and Clerk deeming such exclusion to be required by virtue of the provisions of Section 1861, Article 28, United States Code, Article 3 of the Constitution of the State of Texas, and the civil and criminal statutes of the State of Texas enacted pursuant to the constitutional provisions.

I know and can state that for at least thirty years last past the jury box used at the El Paso Division of the United States District Court for the Western District of Texas, and from which the names of all persons serving as grand and petit jurors in that Court have been drawn, has not contained the name of a single woman available for grand or petit jury service, and that during such period no woman has been selected or drawn for grand or petit jury service in that Court, and I know that the indictment returned against the defendant, Clinton E. Jencks, was found and presented by a grand jury drawn from the jury box above described, and that no women served on such grand jury.

(S.) E. B. ELFERS,
(E. B. Elfers.)

Subscribed And Sworn to before me, the undersigned authority, by E. B. Elfers this 28th day of September, 1953.

(S.) BEATRICE N. GOSSETT,
Notary Public in and for El Paso County, Texas.

(Seal)

MOTION TO REQUIRE UNITED STATES ATTORNEY TO FURNISH LIST OF WITNESSES.

(Filed September 18, 1953.)

To The Court:

Clinton E. Jencks, defendant in the above styled and numbered cause, moves the Court for an order requiring the United States Attorney for the Western District of Texas to furnish this defendant and his attorneys of record a written list of the names and addresses of all witnesses whom such attorney will call and use as witnesses for the Government upon the trial of the above styled and numbered cause.

In support of and as grounds for such motion, defendant shows to the Court that prior to the return of the indictment herein, no complaint nor charges of any character had been filed against him, upon which he could demand a hearing and thereby learn who the witnesses were by whose testimony the Government would undertake to make proof of any unlawful acts committed by this defendant. Defendant further shows that if this Court has jurisdiction, the same can be established only by the fact that an affidavit executed by this defendant in another state was carried by United States mail

to a point within the territorial jurisdiction of this Court, and that the gravamen of the offense, the alleged falsity of the statements made in such affidavit, will necessarily be established by witnesses from states other than the State of Texas, and whose places of residence are at a considerable distance from El Paso, Texas. Defendant says that unless he can have the names and addresses of the witnesses by whom the Government proposes to make proof of the falsity of the statements contained in the affidavit described in the indictment, he cannot properly prepare his defense in this cause. This defendant says that he stands charged with a serious offense as against which he should be afforded the right and full opportunity of preparing his defense thereto. That no possible injury can result to the prosecution from granting the relief herein prayed for, and that a denial of such relief will force this defendant to trial with no opportunity to properly prepare his defense in this cause.

Defendant prays that his motion be granted, and that the order granting such motion require the United States Attorney to furnish the list requested within ten days after such order, and in no event later than thirty days before the date which has been set for the trial of this cause.

Respectfully submitted,
JOHN T. McTERNAN,

Los Angeles, California.
(S.) E. B. ELFERS,
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MOTION FOR ISSUANCE OF A PRE-TRIAL SUBPOENA—RULE 17 (c)

(Filed September 18, 1953.)

To The Court:

The defendant, Clinton E. Jencks, moves for the issuance by a judge of this Court of a subpoena directed to the United States Attorney for the Western District of Texas commanding him within ten days of the date of service of said subpoena, and in no event less than thirty days before the trial of this cause, to produce for the inspection of and copying by defendant or his counsel all books, papers, documents and objects (except memoranda prepared by government counsel, and documents or papers solicited by or volunteered to government counsel which consist of narrative statements of persons or memoranda of interviews), obtained by government counsel, in any manner other than by seizure or process, (1) in the course of the investigation by the grand jury which returned the indictment herein, and (2) in the course of the government's preparation for trial of this cause, and if such books, papers, documents or objects (a) have been presented to the Grand Jury, or (b) are to be offered as evidence upon the trial of the defendant under the indictment, or (c) prove or tend to prove any allegation or charge in the indictment or to disprove any such allegation or charge.

Respectfully submitted,

JOHN T. McTERNAN,

Los Angeles, California.

(S.) E. B. ELFERS,

(E. B. Elfers),

Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.